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11 *Legal Title Trustee*

12 **UNITED STATES DISTRICT COURT**

13 **FOR THE DISTRICT OF NEVADA**

14 GMAT LEGAL TITLE TRUST 2013-1, U.S.  
15 BANK NATIONAL ASSOCIATION, AS  
16 LEGAL TITLE TRUSTEE,

17 Plaintiff,

18 vs.

19 SFR INVESTMENT POOL 1, LLC; DOES I  
20 through X, inclusive; and ROE  
21 CORPORATIONS I through X,

22 Defendants.

Case No.: 3:15-cv-00518-MMD-WGC

**PLAINTIFF'S MOTION TO AMEND  
COMPLAINT AND CAPTION**

**MOTION TO AMEND COMPLAINT AND CAPTION**

**I. INTRODUCTION**

23 Plaintiff GMAT LEGAL TITLE 2013-1, U.S. BANK NATIONAL ASSOCIATION, AS  
24 LEGAL TITLE TRUSTEE (hereinafter "U.S. Bank" or "Plaintiff"), by and through their  
25 attorneys of record, Edgar C. Smith, Esq. and Rock K. Jung, Esq., of the law firm of Wright,  
26 Finlay & Zak, LLP, hereby moves for leave to amend its Complaint and to amend the caption to  
27 reflect the new parties.

**II. ARGUMENT**

28 Federal Rules of Civil Procedure ("F.R.C.P.") 15(a)(2), 15(d) and 20 in federal court  
permits a party to amend its pleading by leave of court and states that "leave shall be freely given

1 when justice so requires.” F.R.C.P. 15(a). The Ninth Circuit has similarly held that the policy of  
2 freely granting leave to amend “is to be applied with extreme liberality.” *Owens v. Kaiser Found.*  
3 *Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001). “In exercising its discretion a court must  
4 be guided by the underlying purpose of Rule 15 — to facilitate decision on the merits rather than  
5 on the pleadings or technicalities.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.  
6 1987)). Therefore, a party shall be given leave to amend freely provided there is no existing bad-  
7 faith factors such as undue delay, bad faith or dilatory motive on the part of the movant seeking  
8 leave. 3 MOORE'S FEDERAL PRACTICE - CIVIL § 15.14 (2011) (analyzing F.R.C.P. 15(a) and  
9 stating that “[d]enial of leave to amend is disfavored; and a district judge should grant leave  
10 absent a substantial reason to deny”).

11 Here, applying these well-established principles, the Court should grant Plaintiff’s  
12 request for leave to amend. Justice requires leave to amend, as the subject HOA and its sales  
13 trustee proceeded to sell the Property without, *inter alia*, proper notice and also including  
14 improper fees. Further, the Nevada Supreme Court’s recent decision in Horizons at Seven Hills  
15 Homeowners Association v. Ikon Holdings, LLC, 132 Nev. Adv. Op. 35 (April 28, 2016)  
16 (“Ikon”) and Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp.  
17 Inc., 132 Nev. Adv. Op. 5 (Jan. 28, 2016) (“Shadow Wood”) has substantially changed the law  
18 of HOA sales, regarding recitals, amounts that comprise the super-priority lien portion, and the  
19 pleadings should appropriately be amended to reflect the state of the law after that decision.  
20 Plaintiff’s current action against just Defendant SFR INVESTMENTS POOL 1, LLC, is  
21 untenable as it stands, as colorable claims also exist against the HOA (White Lake Ranch  
22 Association) and its sales trustee/agent (Kern & Associates, Inc. and Phil Frink & Associates,  
23 Inc.). In the Shadow Wood case, an end was brought to the past arguments by buyers that relied  
24 solely on the recitals in an HOA foreclosure deed to establish quiet title in favor of the buyer.  
25 Plus the Shadow Wood decision demonstrates genuine issues of material fact related to fees and  
26 costs, commercial reasonableness, and the circumstances surrounding the HOA Sale need to be  
27 explored in discovery. Meanwhile, in the Ikon case, the Nevada Supreme court stated that the  
28

1 super-priority lien is ONLY 9 months of dues and nothing more. Thus, the Court soundly  
2 rejected the HOA's argument that they must be able to have collection fees and costs.

3 These recent developments as well as the fact that Plaintiff, HOA and the HOA Trustees  
4 are still waiting to have a NRED mediation scheduled, makes vital the allegations in Plaintiff's  
5 Amended Complaint that White Lake Ranch Association and its agents- Kern & Associates, Inc.  
6 and Phil Frink & Associates, Inc. ("HOA Trustees") - failed to properly notify Plaintiff that it  
7 was foreclosing on the superpriority portion of its lien, and that it further failed to identify or  
8 provide the super-priority amount in any of its notices. *See* attached as Exhibit "A", Plaintiff's  
9 proposed Amended Complaint. Moreover, the Court stated that lenders should have a right to  
10 pay off an HOA delinquent assessment lien to protect its interest. *Id.* at 414 ("U.S. Bank could  
11 have paid off the [HOA] lien to avert loss of its security.").

12 As discussed earlier, in evaluating a request for leave to amend, courts examine such  
13 factors as undue delay, bad faith, or dilatory motive and whether they are present. Those factors  
14 or reasons are simply not present here. Plaintiff's request to amend the pleadings is timely as  
15 only limited discovery has been commenced, settlement negotiations have commenced between  
16 Plaintiff and SFR, and Plaintiff did not unreasonably delay in bringing this motion as it was first  
17 seeking to complete the NRS Ch. 38 mediation. Furthermore, this request is not made in bad  
18 faith or for any dilatory motive. To the contrary, Plaintiff is seeking leave to amend to ensure  
19 that this case may be evaluated on its merits in light of a recent change in circumstances and in  
20 the law. *See* 3 MOORE'S FEDERAL PRACTICE - CIVIL § 15.14 (discussing F.R.C.P. 15(a) and  
21 noting that "a court should allow amendments to ensure that all the issues are before the court").

22 In addition, the clear benefits of streamlining adjudication of common facts and related  
23 issues weigh heavily in favor of permitting amendment, as joining all of the relevant parties and  
24 adjudicating all claims in one action will benefit judicial economy, save the parties time and  
25 resources, and enable a thorough and conclusive determination of the parties' contentions.

26 Plaintiff also requests that the Court amend the caption to reflect the change in parties as  
27 shown in Plaintiff's proposed Amended Complaint, attached hereto as Exhibit "A".  
28

1           **III. CONCLUSION**

2           For these reasons, Plaintiff respectfully requests leave to amend its Complaint in this  
3 matter, and for an Order of the Court amending the caption to reflect the change in parties.

4           Dated: July 8, 2016.

5                               WRIGHT, FINLAY & ZAK, LLP

6  
7                               /s/ Rock K. Jung, Esq.

8                               Rock K. Jung, Esq.

9                               Nevada Bar No. 10906

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10                              Attorneys for Plaintiff, GMAT Legal Title Trust

11                              2013-1, U.S. Bank, National Association, as Legal  
12                              Title Trustee

13                              **CERTIFICATE OF SERVICE**

14           I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP;  
15 that service of the foregoing **PLAINTIFF'S MOTION TO AMEND COMPLAINT AND**  
16 **CAPTION** was made on this 8 day of July, 2016, to all parties and counsel as identified on  
17 the Court-generated Notice of Electronic Filing system, and/or by depositing a true and correct  
18 copy in the United States mail, addressed to the following:

19  
20           Diana S. Cline Ebron, Esq.  
21           HOWARD KIM & ASSOCIATES  
22           1055 Whitney Ranch Drive, Suite 110  
23           Henderson, Nevada 89014  
24           Attorney for Defendant, SFR  
25           Investments Pool I, LLC

26                                
27                              An Employee of WRIGHT, FINLAY & ZAK, LLP  
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